CF0000058285

Cr A. 358/95

(2)

/- APPEAL OF PRISONER -/

No. 62 Name तेलामी मोहन

Father's Name लखमू Residence ग्राम- धुरली मुजारी पारा पोस्ट- भान्सी, बस्तर

Age 33 Sentenced to आजीवन कारावास on

26.8.94 under Section 302 I.P.C by III अति० सत्र न्याया० जगदलपुर

S.T.No. 156/94

It is explained to the prisoner that if he states or Wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with the seven days he may be heard at all if the prisoner states that the does not wish to be represented by legal practioner the Court may proceed at once with the case and will not be obliged to give a hearing to any legal proct-itioner who should appear.

1. Date of application for copy of Judgement : No.

2. Date of which copy received :- 7.10.94

3. Date on which Appelisent :- 11.10.94

4. Whether the prisoner wished to be represented or not Yes/No.

No. 62 Name तेलामी मोहन S/o लखमू

Continued in जिला Jail प्रथम श्रेणी जगदलपुर

No. 361/oCtagon./94 Dated 11/10/94

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur together with a copy of judgement or order passed in the case for favour of transmission to the proper Appliate Court.

Superintendent Central/Distt./Sub Jail

Date of receipt in C.J.M's Office. 20.10.94

Date of receipt of record of accompany.

Memo of Appeal of the Appelliate Court. 21.10.94

No. 32/94 Dated 21.10.94

Forwarded to the Hon'ble Sessions Judge JDR.

16/95/94 dt 1.10.94 C.J. Magistrate 21.10.94

मुख्य न्यायिक दंडाधिकारी जगदलपुर

Date of receipt of Appelliate Court.

(11)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A.358/95 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

6-2-2006

Mr. Shailendra Dubey, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Oral judgment dictated on Dais.

Per L.C. Bhadoo, J: -

By this appeal under Section 374 (2) of the Cr.P.C. appellant Telami Mohan has questioned the legality of the judgment of conviction and order of sentence dated 26-8-1994 passed by the 3rd Additional Sessions Judge, Jagdalpur, in Sessions Trial No.156/94, whereby learned Additional Sessions Judge after holding accused/appellant Telami Mohan guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

Case of the prosecution, in brief, is that on 19-1-1994 at about 8-9 p.m. in the night, when deceased Somaru asked accused/appellant Telami Mohan and other accused Telami Budhram that why they are not providing food to his sister Telami Kondi and maintaining her properly, that enraged the accused persons and both of them started beating Somaru with fists & kicks. They took him towards the tree, accused Telami Budhram kicked him and accused/appellant Telami Mohan after catching hold of the neck twisted the neck as a result of which Somaru became unconscious. The crime was witnessed by Telami Kondi (PW-2) & Kunjami Lakhmi (PW-3), they tried to intervene, as Somaru became unconscious therefore they took him to the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

residence, they called Kunjami Joga (PW-1), and in the night at about 3 a.m. Somaru died. On 20th January, 1994, Kunjami Joga lodged the report Ex.P-1 in Police Station: Bhansi. The investigating officer left for the scene of occurrence and after giving notice Ex.P-2 to the Panchas, prepared the Panchnama of the body of Somaru Ex.P-3. The body was sent for post-mortem to Primary Health Centre, Bacheli, where Dr. G.R. Urrao (PW-6) conducted post-mortem and prepared the post-mortem report Ex.P-7. The investigating officer prepared site plan of the place of occurrence Ex.P-5.

After investigating, charge sheet was filed in the Court of Judicial Magistrate, Dantewada, who in turn committed the case to the Sessions Judge, Jagdalpur, from where, learned 3rd Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish charge against the accused persons examined six witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the prosecution evidence, pleaded innocence and stated that they have been implicated in a false crime.

Learned Additional Sessions Judge, after hearing the arguments of A.G.P. and counsel for the accused persons convicted and sentenced accused/appellant Telami Mohan as mentioned in para 1 of this judgment, whereas acquitted accused Telami Budhram.

We have heard learned counsel for the parties.

The homicidal death of Somaru is not in dispute.

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विरुद्ध

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Learned counsel for the accused/appellant Mr. Dubey, at the outset, argued that there was no intention of the accused/appellant to cause the death of Somaru. When Somaru started asking the accused/appellant and other accused that why they are not providing food and maintaining his sister Telami Kondi properly, that enraged the accused persons and all of a sudden, in a sudden quarrel, the accused persons attacked the deceased with fists & kicks as a result of which Somaru died, therefore, the offence does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, Mr. Deo supported the judgment of the trial Court.

As far as the involvement of the appellant in the crime in question is concerned, Telami Kondi (PW-2) has stated in her evidence that accused Telami Mohan and his brother-in-law Telami Budhram attacked his brother at the residence, when she was talking to Lakhmi, Somaru was at residence. The accused persons came and started quarrelling with Somaru. When Somaru enquired from the accused persons, why they are not providing food to her, they started quarrelling and they attacked Somaru with fists and legs. Kunjami Lakhmi (PW-3) has corroborated the above evidence of PW-2. Dr. G.R. Urrao (PW-6) has stated in his evidence that Somaru died on account of neck injury, there was a fracture in the spinal chord, multiple fractures in 1st & 2nd cervical vertebra and ligament 1-L was found fractured.

In view of this ocular evidence and medical evidence, involvement of the accused/appellant in the crime in question is established.

As far as the nature of crime committed by the accused/appellant is concerned, Telami Kondi (PW-2) has clearly stated that when deceased Somaru, her brother, asked the accused that why they are not providing food

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to her, that enraged the accused and he started assaulting Somaru with leg and fists.

From the above facts, it is not established that the accused/appellant assaulted the deceased with intention to cause his death. Further, it can be inferred from the facts and circumstances that the manner in which the accused twisted the neck of the deceased, the accused had definite knowledge that by twisting the neck, he may likely to cause the death of Somaru. Therefore, offence against the accused/appellant does not travel beyond Section 304 Part-II of the I.P.C.

In the result, the appeal partly succeeds and the same is partly allowed. Conviction and sentence awarded to the accused/appellant under Section 302 of the I.P.C. are set aside and he is acquitted of charge under Section 302 of the I.P.C., instead thereof, he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for ten years. The accused is in custody since 20-1-1994, which has not been disputed by learned Additional Public Prosecutor, therefore, the accused/appellant has already served out the sentence. He be set at liberty forthwith, if not required in any other case.

Parties are entitled for certified copy of this order.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

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